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IN THE

Supreme Court of the United States

October Term 1970

No. 2030 Misc.

MARION G. ADAMS,

Appellant-Petitioner,

against

THE STATE OF NEW YORK,

Appellee-Respondent.

BRIEF IN OPPOSITION TO WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF NEW YORK

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To: The Honorable, the Chief Justice and the Associate Justice of the Supreme Court of the United States

The petitioner, Marion G. Adams, prays that a writ of certiorari shall issue to review a judgment of the New York State Court of Appeals entered on January 22, 1970.

Opinions Below

The judgment in the New York State Court of Appeals was unanimous and is officially reported at 26 N.Y. 2d 129. A copy of the decision is reproduced in the Appendix of this brief for the convenience of the Court.

Jurisdiction

The jurisdiction of this Court is apparently sought pursuant to 28 U.S.C. § 1257, subd. 3, it being argued that petitioner's Fourteenth Amendment right to a fair trial was denied her by the introduction into evidence of an involuntary confession.

Questions Presented

The undisputed facts are petitioner put sleeping tablets in her hubby's butterscotch pudding so it wouldn't hurt too much when she beat him over the head with a hammer and stabbed him to death. Petitioner did not contend she was beaten, threatened or coerced in any way so there has never been a claim that her confession was involuntary by traditional or customary standards.

At the trial and in the New York State Court of Appeals, it was argued the confession was involuntary because appellant was under the influence of an unknown quantity of sleeping tablets, self-administered, when she admitted her guilt. Also, the police having failed to advise petitioner of her Fifth and Sixth Amendment rights as outlined by this Court in *Miranda* (384 U.S. 436), the confessions were, as a matter of law, inadmissible.

The People contend the failure of the authorities to advise petitioner of her right to counsel and not to incriminate herself as provided for in *Miranda* was but a single circumstance to be considered with all others in determining if the confession was trustworthy and voluntary.

If we read the petition correctly, the gravamen of the claim is the petitioner was deprived of her Fourteenth Amendment rights by the use of the confession by the authorities at the State Court criminal proceedings because, and only because, she was deprived of her Fifth and Sixth Amendment rights.

The Huntley Hearing

The first prosecution witness, Patrolman Anthony Distefano (108, *et seq.*) together with the second, Sergeant William Walsh (145 *et seq.*) were the first officers to arrive at the scene. The gist of their Huntley testimony is that the appellant *volunteered* that she had killed her husband; they were not questioning appellant, "She was talking" (112).

"She talked very good. She was coherent. She acted as if she was—either had been drinking or as if she had been drugged" (112).

According to Patrolman Distefano, he did nothing to elicit the admission from appellant (114); he didn't question her. "She was doing the talking" (114).

Officer Distefano denied making any threats or promises. Although he had lots of experience with irrational people as a result of 14 years on the force, he was, we say, improperly precluded from expressing an opinion regarding the rationality of appellant (118; *People* v. *Hill* [1909], 195 N.Y. 16; *People* v. *Pekarz* [1906], 185 N.Y. 470, p. 481) when she was confessing.

Officer Distefano repeated, "When we first walked in, she seemed normal with the exception that maybe she had been drinking or she was under drugs, but she talked fairly well to us." (121)

When he and Sergeant Walsh first entered the premises, in his opinion, she wasn't drowsy, but later on "her eyes started to close at times as if she was drowsy." (123)

Officer Distefano estimated that appellant started to act drowsy "the latter part of the hour." (123)

Sergeant William Walsh (145 *et seq.*) corroborated Patrolman Distefano in all essentials regarding the spontaneous declarations of appellant at the scene. The Ser-

geant described appellant's face as "just a normal serious expression; normal serious expression." (148)

That appellant understood fully the significance of what she was saying was manifested, in part, by appellant's comment that the deceased was in the cellar and not upstairs as the police assumed (148).

Initially her eyes "appeared like anybody else's eyes" (151). It was not until "perhaps an hour" later that "she appeared to be a little drowsy" (150).

"She appeared to be sleepy". Her eyelids seemed heavy (151). There were no promises or threats made (151). In Sergeant Walsh's opinion, her speech "appeared all right" (152); it was not slurred "too much" (158).

The first detective to arrive was Ronald Ryan (158) who first saw the defendant as she was brought into the kitchen. According to Detective Ryan, she was wearing a black dress and black fancy stockings. The back zipper on her dress was open to the waist. In the opinion of Detective Ryan, "she walked straight and perfectly normal" (160). Her face appeared "perfectly normal to me" (161); although "she looked like she might have been drinking" (161).

They sat down at the kitchen table where Detective Ryan advised her "she need not make a statement to me and if she did it could be used in evidence, and I asked her what happened, and I wrote it down on a paper as a statement, and at the end of it, she signed it" (161). This first signed statement of appellant is People's Exhibit 3.

During the entire episode, appellant appeared to be coherent; Detective Ryan had no trouble understanding what she said (163), although "near the end of the statement, she looked to me like she was a little drowsy" (163).

Detective Ryan denied that the appellant fell asleep and he insisted that her talk or conversation did not slow

down although the 6 to 8 sleeping tablets which appellant insisted she had consumed prompted appellant to say "she was tired" (163).

Thereafter, the appellant walked to the police ambulance that had been summoned and was accompanied to Meadowbrook Hospital by Detective Ryan.

According to the detective, "she was a little groggy" (166) upon her arrival. Appellant was administered to by Dr. Betty Kuo who thereafter gave Detective Ryan permission to speak to appellant in the ward nearby.

Detective Ryan reiterated that although appellant "appeared to me to be groggy * * * she understood what I was saying * * * I could understand her. She didn't slur her words or anything" (167).

Detective Ryan then testified to the following admission by the appellant (170):

> "Q. All right. Now, what I want you to tell us, Detective, is what she said to you and what you said to her? A. (No response.)
> Q. Can you remember? A. Not word for word.
> Q. Do you wish to refresh your recollection? A. I would like to.
>
> The Court: Have that marked.
> Mr. Marchese: I am referring you to People's Exhibit 2 previously marked for Identification, Detective.
>
> Q. I ask you whether or not that will refresh your recollection; yes or no? A. Yes, it will.
> Q. Do you feel you have to refer to that to refresh your recollection; yes or no? A. No.
> Q. All right. Can you tell us what she said and what you said to her. A. She said she was in Doctors Hospital. She had an operation for rectal troubles. She met a Doctor Zaccanti there. After she got out of the hospital he came to her house. She said he kissed her, got passionate, they had relations.
> She said another time she had relations with him.

He refused to use protection. She was afraid she was pregnant. She stated that she made pudding. She put sleeping pills in the pudding and kept it separate in the icebox from her daughter, herself and her husband. That night they ate. She gave this pudding to her husband. He mentioned that it was—that it tasted tainted.

After he ate it he went down to his bedroom. He fell asleep, and she went down to see if he was asleep.

She went out in the garage, got a hammer. She had a knife she got from the kitchen. She went into his bedroom. She said she hit him on the head so he wouldn't feel the pain, and she stabbed him with the knife. She said she took six to eight sleeping pills."

Detective Ryan testified further that the defendant did not sign the second statement at the hospital because she wanted to speak to an attorney first. Mysteriously, when Detective Ryan was asked to contrast appellant's appearance in the court room with that on the night of the homicide, the Court improperly sustained defendant's objection (201-202).

The fourth witness was the jail matron, Margaret Taylor (202 *et seq.*) who took over about 11 or 11:30 at Meadowbrook. According to Mrs. Taylor, she first saw the appellant in the emergency room where appellant "seemed quite calm and collected" (204) "and cool" (210). She talked to the Doctor clearly and understandably (210).

After receiving an injection from Dr. Betty Kuo, appellant and Mrs. Taylor left for a private room to change appellant's clothes where "she was talking to me and vice versa. I mean woman to womanlike" (212).

Regarding the admissions made to Mrs. Taylor in the emergency room, and then later, she testified thusly (214-216):

"Q. Would you tell us what was said. What was the conversation you had with her? A. She told me how she gave her husband—

Q. What did you ask her? What did you say to her first? A. Well, I asked—

Mr. Lamb: Objection, your Honor. He asked what was said by both sides.

The Court: Sustained. Strike it all out. Start all over, Mr. Marchese.

Q. All right. Will you tell us the conversation you had with this defendant in that third room; what you said to her, what she said to you, all of it. A. Well, I would have to go back to the second room where she started to talk to me, then.

Q. All right. A. And continue on.

Q. All right. Let's go back to the second room. Who was present in the second room? A. Well, myself and Marion and Detective Ryan, but there was no questioning going on by Detective Ryan at that time. She was telling me how she killed her husband and what a good provider that he was, and how she had given him sleeping pills in butterscotch pudding, and then she went to the garage and picked up a hammer. And after she found that he was sleeping from the pills that she hit him on the head with the hammer and then stabbed him. And she said that she was calm and collected, that she couldn't have done it, that she had planned it to do for two weeks but she didn't know how, and the reason why she done it was that she had feared that she was pregnant.

And I said, 'By your husband?' and she said, 'No, by my friend.'

She said, 'He is a doctor in Freeport Hospital.' At that time she didn't give me no name.

So I said, 'Well, why did you do a thing like that?' She said it was more or less for security for her daughter.

So I said, 'Well, to commit a crime like that,' I says, 'wouldn't it have been easier to talk to your husband and ask him for a divorce on adultery?'

She said, 'No,' that her husband would have gotten her daughter in custody and then she would have been claimed an unfit mother. And that was that.

But Detective Ryan was in the room with us but he was not doing any questioning to the prisoner. He was just sitting there.

Q. And that happened in the second room? A. Yes.

Q. And any conversations in the third room? A. Yes. This was continued on the same way as she told me in the second room.

Q. Well, what did she tell you in the third room? A. Then she told me the doctor's name, that it was Dr. Zaccanti, and that he was a highly intelligent man.

So I said, well, I still didn't understand why she should do a thing like this. She said that she had intercourse with this doctor about three or four times, but he did not believe in protection, using protection, and she was afraid that she was pregnant.

But she said she gave her husband the sleeping pills in the pudding so he wouldn't feel pain because he was a good man and a good provider.

And then we were more or less talking about different things in general. I mean—

The Court: You are telling us now that she said the exact same thing again in the third room?

The Witness: Yes, sir.

The Court: In the prison ward room?

The Witness: Yes, sir.

The Court: All right.

Q. Did you question her at any time? A. No, sir; only to the fact about why she committed a crime like this when she could have went to her husband and told him she committed adultery, that's all.

Q. And did you threaten her in any way?

Mr. Lamb: Objection.

The Court: No, I will allow it.

A. No, sir.

Mr. Lamb: Your Honor, there has been a whole series of questions, witness after witness, 'threatened, coerced, forced.' They are all conclusory statements, and I object to all of them.

The Court: All right. The record will so reflect. I will allow it.

Q. Will you tell us whether or not you struck her at any time. A. No, sir."

Mrs. Taylor described appellant's manner of speaking as "very clear" (218) but improperly, we say, was precluded from expressing an opinion regarding appellant's rationality (218).

On cross-examination, Mrs. Taylor declared that when she first saw appellant on the table in the emergency room, "she seemed all right." "I mean she had a little smile on her face, but nothing to be too happy about" (221). Appellant's arms were folded across her chest, and she was talking "fine", not fast or slurred or excited (222). Every word was understandable (222).

At no time was the appellant under physical restraint (226). As a matter of fact, Mrs. Taylor who at that point did not know that appellant had taken sleeping tablets could not understand why she was getting an injection as she looked so good (226-227).

Edward Zimmerman was the ambulance driver (233 *et seq.*) who drove the appellant from the scene to Meadowbrook Hospital. Zimmerman declared that when he first saw appellant in her room, her face "was the same as anyone else in the room" (235); "the eyes were normal (235); well, just from my observations, she seemed absolutely normal * * * her speech, her movement, everything was normal (237). She walked to the ambulance * * * she didn't have any difficulty" (241).

"She was talking all right as far as I could see. Her speech wasn't slurred or anything. She seemed to know what she was talking about. She could describe what she did" (257).

"She was crying a little bit" (258) but there were no body shakes (258). The breathing was "normal" and appellant was not antagonistic (266).

Patrolman Robert Farmer (275 *et seq.*) accompanied the police ambulance to the scene. Officer Farmer described appellant's physical appearance as "good" (276); her speech was clear (276) although she cried from time to time. Her talk was normal (278) and on the way to the hospital, appellant "*wanted to know if they had done away with the death penalty yet*" (290).

Doctor Betty Lee Kuo (291 *et seq.*) was working at Meadowbrook on the evening of March 20, 1965, when appellant was admitted. Dr. Kuo was a graduate of the Albany Medical College, 1964. The lady doctor testified she conducted an examination of the appellant's entire body including the head, eyes, mouth, nose, heart, lungs and the abdomen. According to Dr. Kuo, "the pupils were equal and they were regular, and they reacted to light and they showed "nystagmus" (301) which "means the pupils would go back and forth. If that person were looking in one direction, the pupils were coming back and forth instead of holding at just one position. This is not voluntary" (301).

Dr. Kuo declared that nystagmus could be caused by some medication (302). In her opinion, she found "nothing else that is abnormal" (302).

The Doctor found nothing abnormal about the head or tongue and, of course, there was no evidence of injuries (302).

According to the Doctor, the appellant's heart beat "was somewhat fast, but otherwise it was regular. There was no murmur and there was no enlargement of the heart" (304).

In the opinion of Dr. Betty Lee Kuo, a heart beat of 100 is considered normal and appellant's registered 120 per minute (304).

Regarding the abdomen, the Doctor testified it was normal; there was no tenderness (304). There were no de-

formities of the legs or arms; the pulse was good and there was no swelling or blue coloring. The blood pressure was 160 over 90 which was slightly high (305). The respiration rate of the patient was 16 per minute which was also normal (304).

There was no indication of shock (306) and appellant's speech was coherent (306). The Doctor had no difficulty in understanding what the appellant said and she did not think the case serious enough to induce vomiting (307).

In the opinion of Dr. Kuo, the appellant was lethargic (307); she was neatly dressed and talked quietly and clearly (307), although the appellant was depressed and her lethargic state might be due to an overdose of Nembutal (308).

As a medication, she injected appellant with glucose and water, 2,000 cc's to promote the excretion of the Nembutal (309).

In the opinion of the Doctor, the glucose and water would not affect the patient in any way physically or mentally (314).

Huntley Ruling

Judge Oppido ruled with respect to the foregoing admissions and confessions thusly (528-529):

> "Now, my decision on the Huntley matter: Here again I will have a memorandum decision, but for the guidance of counsel I will give you my ruling as to those statements which I have found to be voluntarily made and that the People have proven beyond a reasonable doubt as to the voluntariness so that you could be guided in your opening to the jury if and when you wish to make such an opening.
>
> Number one, the statement made by Marion Adams that was made at the front door, the oral statement which was overheard by Patrolman Diste-

fano and Sergeant Walsh, I have ruled to be admissible.

Two, the oral statement in the bedroom overheard by Patrolman Distefano, Chauffeur Zimmerman and Patrolman Farmer and Sergeant Walsh, I rule and find it is admissible.

Three, the oral and written statements to Detective Donald Ryan in the kitchen, I find this statement to be admissible.

Four, the oral statement to Patrolman Farmer in the ambulance on the way to the hospital, I find this to be admissible.

Five, as to the oral statement to Matron Margaret Taylor, I find, (a) the oral statement in the room next to the emergency room at Meadowbrook Hospital as admissible.

(b) The oral statement made in the prison ward on the second floor at the Meadowbrook Hospital admissible.

Six, the unsigned written statement to Detective Donald Ryan in the prison ward at Meadowbrook Hospital, I find that to be not admissible.

Seven, the oral statement to Detective Ryan in the prison ward at Meadowbrook Hospital, I find that to be not admissible.

Eight, the oral statement to Matron Margaret Taylor in the prison ward at Meadowbrook Hospital —gentlemen, I said to you that the oral statements in the prison ward on the second floor at Meadowbrook Hospital are admissible: Only those statements which were made prior to the statement made to Detective Ryan and requesting an attorney. Every statement made to Marion Margaret Taylor after that is not admissible.

Do you understand that, gentlemen?

Do you remember there was a continuous statement made in the prison ward, some prior, some after—separate statements?

All right. That's my ruling. Memorandum and decision will follow.

Bring the jury in the courtroom."

• • •

Memorandum Opinion

COUNTY COURT

NASSAU COUNTY

SPECIAL TERM—PART I

Present:

HON. ALBERT A. OPPIDO, *County Judge.*

Motion Cal. #C-129

Indictment #21,083

———o———

PEOPLE OF THE STATE OF NEW YORK,

against

MARION ADAMS,

Defendant.

———o———

Hon. William Cahn, District Attorney, Nassau County, Mineola, New York.

Nathan P. Zablow, Esq., Atty. for Defendant, 126 Merrick Road, Freeport, New York.

Eugene G. Lamb, Esq., Atty. for Defendant, 1539 Franklin Avenue, Mineola, New York.

This application is made on behalf of Marion Adams, the defendant, who was indicted for the crime of Murder in the First Degree, to suppress certain oral and written admissions. A hearing was conducted pursuant to the mandate of *Jackson* v. *Denno,* 378 U. S. 368, 1964, and in accordance with the procedure outlined in *People* v.

Huntley, 15 N.Y. 2d 72, to determine the voluntariness of certain written and oral admissions made by this defendant. The hearing disclosed the following facts:

Patrolman Anthony Distefano and Sgt. William Walsh arrived at the defendant's home, 530 Links Drive East, Oceanside, Nassau County, at approximately 9:05 P.M. on March 20, 1965. A woman, subsequently identified as the defendant, answered the door. In response to the question, "What's wrong?", she stated that she had taken sleeping pills. As the officers entered the home, Mrs. Adams, as she was walking up the stairs toward the living room, stated she had killed her husband. She was asked where the body was and she said he was in the basement bedroom (Statement #1).

After finding the body, Patrolman Distefano and Sgt. Walsh went to the master bedroom. There they observed that the defendant had pills in her hand. Patrolman Distefano took the pills from her. He did not observe Mrs. Adams consuming any of the pills.

After Sgt. Walsh called headquarters Mrs. Adams stated again that she had killed her husband, and added other inculpatory remarks. This statement was also overheard by Patrolman Farmer and Chauffeur Zimmerman, who had arrived at the scene. Throughout this period there was no questioning of the defendant except to ask her what a particular word or phrase meant (Statement #2).

Detective Ronald Ryan arrived at the premises at about 9:40 P.M. and the defendant was brought to the kitchen. There she was questioned by Detective Ryan and he reduced her answers to writing (Statement #3).

Thereafter, the defendant was taken by the police ambulance to Meadowbrook Hospital. On the way to the hospital, the defendant made another statement in the form of a question (Statement #4).

At the hospital, the defendant was brought into the emergency room where she was examined by Doctor Betty Lee Kuo. Policewoman, Matron Taylor, was assigned to stay with the defendant. The defendant talked to Matron Taylor in a room adjacent to the emergency room (Statement #5). Det. Ryan was also present in the adjacent room.

Thereafter, the defendant was moved to the prison ward where she was again questioned by Detective Ryan. Detective Ryan reduced the answers to writing; however, Mrs. Adams refused to sign this statement (Statement #6), until she talked with an attorney. The questions and answers were overheard by Matron Taylor.

After Detective Ryan departed Mrs. Adams continued talking with Matron Taylor (Statement #7).

The defendant contends that the failure to advise her of the right to the aid of counsel renders the seven statements inadmissible in evidence. To dispose of this question, the Court observes that there are many conflicting views (*People* v. *Dorado,* 62 Cal. 2d 338, 42 Cal. Rptr. 169, 398 P. 2d 361; *United States ex rel. Bisignano* v. *New Jersey,* — F. 2d — [3rd Cir.]; cf. *U. S.* v. *Cone,* — F. 2d — [2nd Cir.]; *U. S.* v. *Robinson,* — F. 2d —[2nd Cir.]) which may soon be clarified by determination of the cases now pending in the Supreme Court of the United States. However, there is no obligation under the laws of the State of New York to apprise an accused of the right to counsel or to advise him of his privilege to remain silent. *People* v. *Gunner,* 15 N. Y. 2d 226, 223; *People* v. *Dusablon,* 16 N. Y. 2d 9.

In the instant case, the testimony of Sgt. Walsh and Detective Ryan, to the effect that they apprised Mrs. Adams of her privilege to remain silent, was uncontroverted. Under the circumstances, the mere fact that the police did not advise the defendant of her right to counsel does not render the seven statements inadmissible.

The defendant also maintains that during post-arrest interrogation she requested to consult counsel. The testimony elicited at the hearing clearly discloses that Mrs. Adams did request the aid of an attorney when Detective Ryan was questioning her in the prison ward at Meadowbrook Hospital. In fact, Detective Ryan readily admitted that Mrs. Adams refused to sign the statement which she had reduced to writing at the prison ward. Mrs. Adams' refusal to sign the statement was based on her request to consult counsel.

Based upon the uncontradicted facts, the Court is of the opinion that the instant case falls within the purview of *People* v. *Donovan,* 13 N. Y. 2d 148; *People* v. *Failla,* 14 N. Y. 2d 148, and *People* v. *Sanchez,* 15 N. Y. 2d 387. These cases hold that, if during post-arrest interrogation, counsel seeks to speak to the accused or if the accused requests the aid of counsel, and a confession thereafter is obtained, that inculpatory statement(s) must be suppressed.

In the instant case, the defendant requested to consult counsel during post-arrest interrogation in the prison ward of the hospital. Therefore, this Court holds that statements, numbers 6 and 7, must be suppressed and excluded as evidence at the trial of the within indictment. *People* v. *Donovan, supra; People* v. *Failla, supra; People* v. *Sanchez, supra.*

In addition, the defendant urges that the statements 1 through 7 were given at a time when her will was overborne. Specifically, the defendant alleges that when she gave the statements she was under the influence of a combination of an overdose of sleeping pills and alcohol.

In view of the fact that the Court has already excluded statements numbers 6 and 7, it will consider the defendant's allegations solely on the question of the voluntariness of statements 1 through 5.

A confession or admission is excluded when it was given in violation of constitutional and statutory safeguards. (U. S. Const., Amendment XIV; Code of Criminal Procedure Section 395.) The defendant relies upon the case of *Townsend* v. *Sain*, 372 U.S. 293. There, the Supreme Court described the test of voluntariness as follows:

> "If an individual's will was overborne, or if his confession was not 'the product of a rational intellect and a free will' his confession is inadmissible because coerced." 372 U.S. 293, 307.

This standard is applicable to drug-induced statements. *Townsend* v. *Sain, supra,* page 307.

The testimony at the hearing disclosed that Mrs. Adams told Patrolman Distefano and Sgt. Walsh, immediately upon their arrival that she had taken sleeping pills. Moreover, Patrolman Distefano, Sgt. Walsh, Chauffeur Zimmerman, Patrolman Farmer and Detective Ryan testified, that although Mrs. Adams looked as if she had been drinking or was drugged, she spoke well, walked normally without assistance, and acted rationally. In addition, Matron Taylor who first saw Mrs. Adams at the hospital, stated that the defendant appeared calm and collected.

All of the police officers stated that Mrs. Adams talked freely; that they, with the exception of Detective Ryan, did not ask questions except to ask Mrs. Adams to clarify something which she had said. Finally, the police officers testified that the defendant appeared to comprehend what she was doing.

Chauffeur Zimmerman, the ambulance driver, who had been trained in first aid, and had in the past administered treatment to many people who had taken drugs, testified that Mrs. Adams' eyes appeared normal, and that she spoke coherently. He also said, that although he stated on the "aided" card the defendant had taken sleeping pills,

he based this impression on what a Dr. Hyman had said. Chauffeur Zimmerman explained that Dr. Hyman, who examined Mrs. Adams at the house, told him (Zimmerman) that Mrs. Adams was capable of being questioned, and that her heart and eyes were normal. While recognizing that this is hearsay testimony, it was received without objection.

There is some testimony in the record that after Detective Ryan had finished taking Mrs. Adams' statement and after she signed it, Dr. Hyman (who did not testify at the hearing) examined Mrs. Adams for the second time. Dr. Hyman purportedly recommended that Mrs. Adams be taken to the hospital. Moreover, when Mrs. Adams walked through the house on the way to the ambulance, her walk was steady and straight, although some of the police officers testified that she appeared to be drowsy about one hour after they arrived at the scene.

The Policewoman, Matron Taylor, who was assigned to stay with the defendant at Meadowbrook Hospital, testified that she first saw the defendant in the emergency room. Some time thereafter, the defendant was moved to a room adjacent to the emergency room. Matron Taylor stated that the defendant was calm, rational and talking freely. Detective Ryan, who was present in the room adjacent to the emergency room and overheard the defendant's oral statement (Statement #5) testified similarly.

Dr. Betty Lee Kuo examined Mrs. Adams at Meadowbrook Hospital at approximately 11:30 P.M. on March 20, 1965. Dr. Kuo is a pediatric resident at the hospital and on March 20, 1965 was a psychiatric intern. Dr. Kuo testified that she was unable to form an opinion as to Mrs. Adams' condition earlier that evening. Dr. Kuo stated that Mrs. Adams was coherent, and oriented; that her speech was quiet and clear most of the time. During the physical examination, Mrs. Adams' blood pressure was found to be 160 over 90, a higher than normal rate. Dr. Kuo testi-

fied that, based upon the history given to her and, the finding that Mrs. Adams was lethargic and demonstrated nystagmus, an involuntary reaction of the eyes, she formed an impression that the defendant had taken nembutal. However, consumption of nembutal would tend to lower blood pressure, rather than raise it above normal limits, as indicated by the objective examination. In addition, Dr. Kuo found that Mrs. Adams was clinically normal in all other respects.

Dr. Kuo testified that where there is an indication of a mild overdose of nembutal, a minimal depression of reflexion would be demonstrated. The objective tests again indicate a contrary finding, as there was no such depression of reflexion found. In addition, Dr. Kuo testified that her findings were compatible with either physical exhaustion or a mild overdose of nembutal.

While much of Dr. Kuo's testimony dealt with a Hypothetical finding of overdosage of Nembutal, this Court is not convinced that such testimony has any bearing considering that Dr. Kuo admits her inability to determine the defendants condition earlier that same evening, and also testifies that she is not a toxicologist and would prefer an expert to answer certain hypothetical questions propounded by counsel. This reasoning is compounded by the differential between the "expected finding for Nembutal overdosage" and the objective clinical findings of blood pressure and depression of reflection.

Based upon the testimony of Dr. Kuo, Patrolman Distefano, Sgt. Walsh, Patrolman Farmer, Chauffeur Zimmerman, Detective Ryan and Matron Taylor, this Court is of the opinion that Mrs. Adams was not in such a state as not to know her surroundings, and not to know what she was doing when she gave statements numbers 1 through 5. It must be observed that the aforementioned witnesses testified that the defendant spoke coherently. The witnesses who had the opportunity to observe Mrs. Adams' walk, testified that the defendant walked normally and

needed no assistance. Furthermore, Mrs. Adams was not interrogated. The defendant talked freely with the witnesses. Dr. Kuo stated that the defendant was neither confused nor disoriented.

The Court, having given due consideration to the testimony adduced at the hearing and the exhibits admitted into evidence finds that the following facts have been proven beyond a reasonable doubt:

1. That the defendant requested counsel in the prison ward at Meadowbrook Hospital;

2. That statements, numbers 6 and 7, were given after a request for counsel;

3. That Sgt. Walsh and Detective Ryan advised Mrs. Adams of her right to remain silent;

4. That the defendant, during the period she is alleged to have given statements, numbers 1 through 5, was at that time not under the influence of drugs so as to impair her ability and power to resist interrogation. It is therefore

ORDERED that statements, numbers 6 and 7, are suppressed and may not be used as evidence at the trial, and it is further

ORDERED that statements, numbers 1, 2, 3, 4 and 5, were made voluntarily, and may be used as evidence at the trial; and it is further

ORDERED that there shall be no publication of this decision or any part of it prior to the case being submitted to the jury or until the indictment of the defendant be disposed of.

ALBERT A. OPPIDO
C.J.

Granted

Dated March 7, 1966
FRANKLIN H. ORNSTEIN
Clerk

The Evidence

The first prosecution witness was Christian Siegmann (548 *et seq.*), a licensed land surveyor who prepared a layout of the murder premises situated at 530 Links Drive East, Oceanside, New York, where the appellant resided with her husband, the deceased, and their 14 year old daughter, Vivienne.

The second witness was a pharmacist, Charles Kaufman (548 *et seq.*) who owned his own place of business at 364 Long Beach Road, Oceanside. Mr. Kaufman did not know the appellant but he testified that on February 2, 1965, he prepared a prescription which was a laxative. On February 12, 1965, he also filled a prescription for Nembutal tablets, 1½ grams.

He refilled the prescription for the Nembutal tablets, a barbiturate, on March 8 and again on March 18, 1965. According to the Doctor, there were 10 capsules in each prescription.

The third witness, Betty Ann Hoffman (599 *et seq.*) gave no testimony.

The fourth witness was the first really important witness summoned by the District Attorney. Dr. Aldo Zaccanti (601 *et seq.*) was the house physician at Doctors Hospital, Freeport. Dr. Zaccanti was born in Arkansas and at 17 years of age returned to Italy where he graduated from the medical school, Bologna University, 1936. Apparently, the Doctor returned to America in 1962.

Dr. Zaccanti met the appellant while she was at the Freeport Hospital in February for a hemorrhoid operation. Sometime after appellant was discharged, she called Dr. Zaccanti at the hospital and wanted to meet him to discuss some personal problems. According to the witness, he met the defendant in her car at the hospital and she

drove him to their home where she indicated that she wanted to do something useful for humanity.

The appellant offered the Doctor a drink and then drove him back to the hospital in Freeport.

The Doctor met the appellant a second time which would be about February 26, 1965, and drove to her home where the discussion continued. According to the Doctor, he again suggested that the best way to do something useful for humanity was to have faith (606, 609).

The Doctor also testified the appellant complained about the hard life "because she was young and she had so many men around, and that she selected the man that was her husband and she could have married better; that she was unhappy." (609)

The Doctor testified he saw the appellant for a third time on March 6, 1965, his birthday, when she picked him up at the hospital and drove him to her home. It was on this occasion that "she opened her desire to invite me to sexual conditions * * * she wanted to have sexual contact * * * because she said that it was six years that she didn't have any relations with her husband * * * so she tried to convince me and she tried to hug me * * * and kiss me" and then she offered the Doctor a prophylactic (611).

According to the Doctor, "I only tried to quiet down her excitement and said 'Look, I will give you my friendship but not these things. I can't do nothing for you; I am sorry.' " (611-612)

Nevertheless, the Doctor returned a fourth time on March 14, 1965, where he said the appellant "retried to convince me upon the sexual contact to have with her and I said, 'No, I can't.' " (612)

The Doctor saw the defendant for the final time on March 20, 1965, again at her home and again over some martinis which apparently figured in all of the prior con-

nections between appellant and the witness. On this last occasion, according to the Doctor, they had some "psychological discussions" for "about an hour and a half" (614).

After discussing "faith * * * humanity and health" (614), according to the Doctor, the appellant "really tried again to convince me to have her sexual contact with her." (615)

Dr. Zaccanti denied being intimate with the appellant. According to the witness, "she treated me awfully bad." (615)

According to Dr. Zaccanti, the appellant appeared to be "very intelligent" (629) with an excellent command of the English language (*supra*) although easily excited. She was in every respect "a normal person" (630).

In Dr. Zaccanti's opinion, "She was not abnormal."

On the night of the homicide at about 8:30 (669 *et seq.*), the appellant telephoned the Doctor and said there was an emergency and she wanted him to come to the home immediately. The Doctor replied that he was on duty and could not leave so she should contact the police.

The Doctor described the appellant as excited and distressed but not hysterical (670).

According to the Doctor, she was speaking clearly as was her habit although her voice was very loud (670).

Following Dr. Zaccanti to the witness stand was Betty Mann (676 *et seq.*), a cousin of the appellant. Accordng to Mrs. Mann, she resided with her husband, Seymour, and their two sons in Bayside, Queens. She received a telephone call from the appellant whom she had not seen for approximately four to five years. She estimated the call was about 8:10.

According to the witness, the appellant confessed "she had killed her husband." (678)

Continuing, the witness testified appellant referred to Dr. Zaccanti and gave his phone number as a person who might help. The appellant related she had taken some sleeping tablets and planned to take more.

According to Mrs. Mann, appellant's voice was high-pitched and she appeared to be nervous although not incoherent (687).

Mrs. Mann testified further that she related what had happened to her husband, Seymour, and they notified the police.

The next prosecution witness was the husband of Betty Mann, Seymour (700 *et seq.*) who corroborated his wife relative to the telephone call.

As a result of the initial conversation, Mr. Mann notified the police and then tried to contact Dr. Zaccanti at the Doctors Hospital in Freeport. According to Mr. Mann when he spoke to the defendant on the phone later on, she appeared to him to be disturbed, upset and tearful, and at times incoherent.

The Manns, pursuant to the directions of the police, went to the scene of the homicide where Mr. Mann identified the deceased.

The next prosecution witness was Sam Abrams (733), the father of the deceased. According to Mr. Abrams, his son changed his name to Adams in 1950. He gave no other material testimony.

The prosecutor next called Harry Hoffman (742), the pharmacist who made up a prescription for appellant prescribed by Dr. Nathan Brody (751 *et seq.*) for 12 tuinal capsules, a barbiturate which is a combination of amobarbital and seco-barbital.

The next witness to the stand was Sergeant William Walsh (760 *et seq.*) who was one of the first officers to arrive at the scene. According to the Sergeant, he and Patrol-

man Anthony Distefano (854 *et seq.*) received the alarm at roughly 8:33 P.M. and arrived at the scene of the homicide at approximately 9 P.M.

According to the Sergeant, he rang the bell and was admitted by the appellant. The Sergeant inquired of the appellant what was wrong and she stated that she had taken some sleeping pills (765).

The officer then started to go up the stairs whereupon Mrs. Adams turned and said that "I killed my husband." (766)

The appellant told the officer that her husband was not upstairs but rather that he was in the cellar.

Upon arriving down below, he was met by Patrolman Distefano who had discovered the deceased lying on a cot in his cell.

The deceased was obviously dead as he was covered with blood and "there was a knife sticking in the left side of his chest." (771)

The two officers then went back upstairs where they discovered the appellant in her bedroom with a glass in her hand and a bottle of sleeping tablets in the other. The appellant repeated that she wanted to die. The pills were removed from Mrs. Adams' possession.

Continuing, the Sergeant testified that he notified the First Precinct of the situation, and checked with the appellant's young daughter who was in a nearby bedroom apparently unaware of what had happened.

The Sergeant also testified the appellant declared: "that she gave her husband pills in his food and that she did it because she didn't want to hurt him. She didn't want him to feel any pain. I asked her why she did it and she stated, 'I did it for my daughter, for the insurance,' I asked her if anyone else had had any involvement in this with her and she stated, 'No; absolutely no.' " (780)

At this point, Patrolman Robert Farmer (968 *et seq.*) and an ambulance driver, Edward Charles Zimmerman (950 *et seq.*) arrived at the scene, the time being 9:11 P.M.

Sergeant Walsh ordered Patrolman Farmer to secure the property on the dresser which appeared to be some letters, and to see to it that no one disturbed the evidence.

The Sergeant also advised the appellant that he was placing her under arrest and that anything she said could be used in evidence against her.

While still at the scene, the appellant related to Sergeant Walsh that her husband was impotent; that they had not had relations for six years although she really didn't want to hurt him.

Sergeant Walsh was corroborated in all his material testimony by Patrolman Anthony Distefano (854 *et seq.*). In the opinion of Patrolman Distefano, the appellant's words seemed to be slurred as she talked but he had no trouble understanding everything she said.

According to the Officer, the appellant started to cry when he took the sleeping pills from her. It was then that she said that she wanted Dr. Zaccanti, and also revealed that she had planned to kill her husband and that she, too, had hoped to die.

The Officer was very clear that the appellant revealed that she was having an affair with Dr. Zaccanti, and that she had planned to kill her husband for a long time.

Patrolman Distefano repeated that the appellant admitted her husband was good to her and she really hated to kill him but she needed the insurance money for her daughter.

The Officer repeated that the appellant revealed she had given her husband sleeping tablets originally so he wouldn't suffer any pain. Moreover, she beat him over the head with the hammer so he wouldn't feel the pain of the knife.

The next prosecution witness was Dr. Stanley Hyman (912 *et seq.*) who pronounced the deceased dead at the scene.

After Dr. Hyman had pronounced the deceased dead, he conducted a cursory examination of the appellant in her kitchen. He was advised by the appellant that she had taken some sleeping pills and her speech did appear to be slurred.

In the opinion of the Doctor, Mrs. Adams was perfectly coherent so he did not indicate to the police that she should not be questioned (938). As a precautionary measure, he ordered that she be taken to Meadowbrook Hospital which Chauffeur Zimmerman complied with.

He was followed by Edward Charles Zimmerman (950 *et seq.*), the ambulance driver who testified the appellant admitted killing her husband and protested that she had taken some sleeping pills.

According to Zimmerman, he asked how many pills she had taken and she replied, "Just some pills." (954)

According to the witness, he looked at the appellant carefully which was the usual procedure and particularly looked at her eyes and inquired how she felt. Zimmerman testified he observed absolutely "nothing" about her eyes (955).

Zimmerman testified the appellant walked from the house to the ambulance where he laid her on a trundle or stretcher and tried to make her as comfortable as possible.

The prosecutor then summoned Patrolman Robert Farmer (968 *et seq.*) who rode in the ambulance with the appellant to Meadowbrook Hospital. On the ride to Meadowbrook, the appellant volunteered that she had been having an affair with Dr. Zaccanti and she also wanted to know *"if they had done away with the death penalty yet."* (975)

Moreover, the appellant also volunteered, "Of course, I would deny all of this in Court." (975)

Officer Farmer described her speech as clear (*supra*).

Following Officer Farmer to the stand was Detective Ronald R. Ryan (922 *et seq.*) who was the first detective to arrive at the scene. Detective Ryan's testimony corroborates for the most part that of Sergeant Walsh and Patrolman Distefano regarding the scene.

It was Detective Ryan who took the first written statement from the defendant, People's Exhibit 39 (1852), a short narrative statement signed by the appellant while still at the scene. The gist of the statement is that the appellant had been drinking martinis during the day and that she made some butterscotch pudding and put the sleeping tablets in it.

After the deceased ate the pudding, he fell asleep on his bed in his cell whereupon appellant went to the garage to get a hammer. She then secured a knife from the kitchen, following which she went to the cellar where she first struck her husband on the head with the hammer and thereafter stabbed him with the knife.

The Detective concluded his testimony by repeating he was present when Dr. Hyman examined the appellant in the kitchen of her home and according to the doctor, appellant's eyes were neither dilated nor constricted although she appeared intoxicated as a result of a barbiturate or alcohol, or a combination thereof, so at the Doctor's direction, he saw her to Meadowbrook Hospital.

In the opinion of Detective Ryan, the appellant walked from the bedroom to the kitchen straight and appeared calm and spoke in a quiet, soft voice. Appellant related she had taken 6 to 8 sleeping tablets.

The People next called Dr. Emeric Rochford, a Deputy Medical Examiner, who pronounced the deceased dead at

the scene (1049 *et seq.*). It was Dr. Rochford who removed the knife from the body of the deceased.

Following the Deputy Medical Examiner to the stand was Margaret Taylor (1059 *et seq.*) a matron with the Nassau County Jail. Mrs. Taylor testified that on the evening of March 20, 1965, she was assigned to Meadowbrook Hospital to attend Marion Adams. According to the matron, she arrived at the hospital at about 11:30 and was with the appellant throughout her stay at the hospital.

After leaving the emergency room, they went to a room nearby where the prisoner started to talk about the homicide. She declared that she had killed her husband because "She said she had feared that she was pregnant." (1061)

Not by her husband but "by a friend." (1062)

Mrs. Taylor replied "Why didn't you tell your husband what had happened? And she said that she didn't tell him this because she feared that she would not get custody of her daughter * * * he would prove her unfit." (1062)

Mrs. Taylor replied, " 'It would have been easier to tell your husband you committed adultery instead of commiting a crime like this.' " (1062)

According to Mrs. Taylor, she left the hospital about 11 A.M., the following morning March 21, 1965, to take the appellant to the First District Court, Mineola, for arraignment.

The next two witnesses, George Felice (1072, *et seq.*) and Frank Mormando (1075 *et seq.*) are a homicide detective and a jailer, respectively, who at this point gave no critical testimony.

Dr. Leslie Lukash (1084 *et seq.*) is the Chief Medical Examiner of Nassau County. Dr. Lukash testified to his findings as a result of the autopsy which revealed multiple stab wounds about the body and numerous hammer blows about the head and face.

Specifically, Dr. Lukash found 22 stab wounds about the chest and abdomen, some of which penetrated the heart, lungs and stomach, as well as 5 hammer marks on the back of the head, resulting in 2 fractures. The Doctor gave the cause of death as lacerations of the heart. He also testified to the toxicological analysis.

Following Dr. Lukash was Dr. Betty Lee Kuo (1177) who was employed at Meadowbrook Hospital on the evening of March 20, 1965, on psychiatric service. Dr. Kuo met the appellant in the emergency room about midnight where she looked into her eyes, her throat, and listened to her chest, heart and abdomen.

According to Dr. Kuo, she found nystagmus in the eyes which might be associated with an overdose of some medication. The heart beat was rapid, *i.e.*, 120 per minute and the pulse rate was compatible with the heart—120.

Most significantly, the Doctor conducted a psychiatric examination and concluded that the appellant was well oriented, her speech was clear, and that she was rational.

The Doctor testified the appellant repeated to her the same story which she had told all along; that she was having an affair with another man because of her unhappy marital life, and that she had killed her husband for his insurance money which she wanted for her daughter.

The Doctor concluded the appellant was suffering from a depressive reaction and that a person so afflicted would be able to think in an organized fashion.

The next witness was Carl Moller (1174 *et seq.*), a member of the Nassau County Police Department assigned to the Technical Research Bureau. The witness testified to the results of his scientific investigation of the physical evidence found at the scene none of which testimony or proof is at issue on this appeal.

Harry F. Brown (1226 *et seq.*) testified to the existence of a $20,000 life insurance policy on the life of Harold

Adams with his company, the Metropolitan Life Insurance Company.

The prosecutor then concluded his case with the testimony of George Felice (1247) who was with the Homicide Squad. His trial testimony basically corroborates and substantiates that of the other police officers preceding him relative to the scene where the homicide took place.

Before resting, Dr. Zaccanti was recalled for further cross-examination (1279 *et seq.*) and Dr. Zaccanti repeated that he had not had an affair with the appellant, and that in his opinion the appellant was rational.

Dr. Zaccanti accounted for his reaction to the Appellants' invitation or proposition thusly: "I have got an elongation of the heart, twisted, and anything that I do—I can't even use my wife." (1284)

The Defense

The first witness, Walter C. Schied (1299 *et seq.*), gave no testimony.

He was followed to the stand by Dr. Herbert S. Anhalt (1310 *et seq.*), the co-director of the in-patient services of the female psychiatric ward at Meadowbrook. Dr. Anhalt did not examine the appellant when she was admitted on March 20, 1965, or see her before she left the following morning. He did write up the diagnosis in the case as a result of a consultation with Dr. Kuo.

It was Dr. Anhalt who concluded that the appellant was undergoing a depressive reaction which Dr. Anhalt described as depression, *i.e.*, where a person is in a depressed state as a result of something which has just recently occurred.

The appellant was readmitted to the Meadowbrook Hospital on April 26, 1965, a little more than a month

after the homicide where the witness again diagnosed the appellant as suffering from a depressive reaction associated with a suicidal attempt.

Originally Dr. Anhalt thought that he should give the appellant an electric shock treatment but he then changed his mind and treated her with thorazine, which is a simple tranquilizing agent. He also prescribed seconal which is a sleeping agent.

The appellant was discharged on May 7, 1965, and readmitted on May 10, 1965, for abdominal pains.

Dr. Anhalt's overall impression of the appellant is that she had a severe depression and in all probability was suffering from a psychosis.

The Doctor described a psychosis as a severe mental illness in which the patient frequently suffers from a thought disorder. The Doctor expressed the opinion that the ability to think rationally is impaired, and in all probability the condition existed in the case of the appellant for some time prior to March 20, 1965.

If we read the record properly, Dr. Anhalt did not on direct examination specifically express the opinion that appellant on March 20, 1965, as a result of a mental disease or defect, lacked the substantial capacity to know or appreciate either the nature and consequences of her act or conduct or that such conduct was wrong.

On cross-examination, the witness conceded that he did not enter in the hospital charts that appellant was suffering from a psychosis when admitted the evening of the homicide (1335).

The witness expressed the opinion that the appellant's depressive reaction could have existed prior to the homicide but "my opinion is that the degree to which I observed it in this patient did not pre-exist." (1341)

The witness concluded his cross-examination by reporting that he observed no psychiatric illness when the appellant was admitted on May 10, 1965 (1342).

On redirect examination, Dr. Anhalt changed his opinion that appellant had a psychosis from "probable" to just "possible" (1352).

It is apparent that Dr. Anhalt fell even farther apart on recross-examination when he declared, "My impression of psychosis in this patient is not based on my diagnosis of the depressive reaction. It has its basis in other factors which I took into consideration" (1354), such as the suicide attempt and the homicide (1354-1355) although the witness never related how or in what way these facts added up to a psychosis.

On redirect, the witness shifted his position again, concluding that his diagnosis that the appellant had a psychosis was in the realm of "probability" (1359).

Dr. Anhalt's testimony, we think, was very inadequate from the defense point of view.

The next witness was the internist, Dr. Donald Behr (1360, *et seq.*), who testified that he first treated the appellant at home on February 2, 1965, and in his opinion, she was suffering from the most terrible case of hemorrhoids that he had even seen or read about. According to Dr. Behr's testimony, he recommended an immediate operation which was done by a Dr. Goldberg.

The appellant was thereafter released from the hospital and on February 16, 1965, when she was re-examined by the surgeon, Dr. Goldberg, she became alarmed over a slight drain attending the surgery. As a result, appellant contacted Dr. Behr and appeared to him to be excited.

The witness examined the defendant at her home and found nothing out of the ordinary.

On February 24, 1965, the Doctor examined the defendant's daughter and on March 15, 1965, he examined the appellant who was concerned over whether she had contracted a venereal disease. The test proved negative.

In Dr. Behr's opinion, "she was emotionally disturbed; suffered from emotional illness" (1368).

The Doctor was never questioned regarding the existence of a mental disease or defect that would preclude the appellant from knowing substantially the nature and consequences of her conduct or that such conduct was wrong. Neither did he express the opinion that she did not have the substantial capacity to appreciate both the nature and consequences of her conduct, or that such conduct was wrong.

The next defense witness was Dr. Robert C. Lane (1377, *et seq.*), a psychoanalyst, not a Doctor of medicine. Dr. Lane testified he administered the traditional tests ordinarily given by a psychologist including the Wechsler Bellevue, Rorschack, the so-called ink-blot test, thematic aperception test a/k/a T.A.T. test, as well as the Bender Gesdalt, and in his opinion the appellant was submissive although very inhibited. Also, she was a well-behaved person who apparently suffered a trauma at 10 years of age and who faced adolescence frightened as well as poorly prepared.

In Dr. Lane's opinion, the appellate never really reached the stage of being a separate individual in her own right nor did she reach the stage of sexual maturity.

The Doctor concluded that the appellant kept all of her problems inside and in his opinion, the combination of surgery for the hemorrhoids taken together with the pain, exhaustion and tranquilizers, plus the martinis, and some guilt over extra-marital involvement added up to an unbearable pressure causing her to lose control and explode.

Again, if we read the record properly, the Doctor never expressed the opinion that the defendant was insane within the meaning of § 1120 of the Penal Law.

Unbelievably, when asked on cross-examination if appellant now "knows" what is going on, the Doctor replied that he was unable to answer because he himself did not "fully understand what you mean by 'knows.' " (1407)

The witness did not at any time ask the appellant whether she knew that she had done wrong (1422). The psychologist testified that he did not render a "diagnosis" (1431), only "an impression." (1432)

The witness concluded his testimony by reporting that he was under the impression the appellant was not really a "paranoid." (1434-1435)

Undoubtedly, the strongest witness for the defendant was Dr. Francis L. O'Neill (1441), the director of the Central Islip Hospital who got into the case because the wife of a "personal friend of mine" (1485), a Mrs. Cantor, was a close personal friend of the appellant (1485). According to Dr. O'Neill, he first examined the appellant at the Nassau County Jail on August 20, 1965, where he took a long history from the appellant concerning her capacity to adjust to problems of society and to determine her process of thinking, as well as her content of thought, orientation and memory.

Dr. O'Neill also saw the appellant at the Jail on September 1, 1965 and October 13, 1965. He also read the hospital records of Doctors Hospital in Freeport relating to the hemorrhoid operation as well as the records dealing with the appellant's admissions to Meadowbrook Hospital, both on the night of the homicide and later. Dr. O'Neill also examined the report of the Medical Examiner relative to the autopsy performed on the deceased and he also examined and read the psychologist's report prepared by Dr. Lane.

It was the opinion of Dr. O'Neill that the appellant lacked the substantial capacity to know the nature and consequences of her own conduct when she was stabbing her husband and smashing him over the head with a hammer. Also, she also lacked the substantial capacity to know that such conduct was wrong (1463-1465).

It was the opinion of Dr. O'Neill that the appellant was psychotic and also suffered a re-active depression. In Dr. O'Neill's opinion, she was also suffering from a psychoneurosis which is a mental illness of long duration.

Dr. O'Neill characterized the criminal act circumscribed by this case as one committed by the appellant when she was suffering from a psychotic episode of great intensity.

On cross-examination, Dr. O'Neill expressed the opinion that the appellant knew she was hitting her husband with a hammer and cutting him with a knife and that death would likely ensue but that she did not possess the "substantial capacity to know or appreciate" that it was wrong.

If we read Dr. O'Neill's testimony correctly, he is expressing the opinion that the appellant knew but didn't really and honestly know what she was doing or that it was wrong. Dr. O'Neill put it thusly (1503-1505):

> "Q. Would you say that this defendant is presently neurotic? A. Yes. This is a life situation.
>
> Q. Life situation? A. Yes.
>
> Q. Would you say that the same act can happen again with a person afflicted with that type of condition? A. Well, a neurotic under pressure may develop a psychotic reaction and react in an abnormal fashion, yes, it is possible.
>
> Q. Doctor, prior to the act, her neurotic condition was not psychotic, was it? A. No. I do not believe it was psychotic until she began to develop depression after surgery.
>
> Q. And during that period, according to your opinion that she suffered from this neurosis, this personality defect, if you will, she was in touch with reality; wasn't she? A. Yes.

Q. And is it your testimony that she got out of touch with reality at the time she committed the act? A. Prior to that time, the depression deepened and her ability to control her impulses and behavior was limited by the mental illness which had—the psychosis which had ensued.

Q. Doctor, you indicated that this was an act that denoted a rage, an anger. A. Yes.

Q. Would it also denote a resentment? A. Well, I think presumably resentment can be included as part of the emotional content of thoughts, yes.

Q. Would it also include hatred? A. Yes.

Q. Doctor, did the defendant know the difference between right or wrong?

Mr. Lamb: Objection. What time?
Mr. Marchese: At the time of the act.
The Court: Overruled.

A. At the time of the act, I do not think that she had a critical ability to distinguish between what was morally right and what was morally wrong. In fact, I am thoroughly convinced that she felt that her course of action was a right course of action, that it was right for her to kill her husband and to destroy herself.

Q. Are you now saying she was suffering from a delusion of some kind? A. Well, I think she has suffered from delusions. She had a delusion of pregnancy, a delusion of venereal infection. She had other distortions of thinking that could be classified as delusions.

Q. Doctor, why do you consider a fear of pregnancy a delusion? A. Well, this was not just a fear of pregnancy. This was a conviction of pregnancy in a woman 40 years of age.

As far as I know, there was nothing to indicate that she was pregnant. There was nothing to indicate she contracted a venereal disease.

After all, she had respect for the man she is alleged to have had relations with. I wouldn't suspect that. I wouldn't believe that she would normally feel that he would give her a venereal disease.

Q. Doctor, if the evidence discloses that the person had intercourse and didn't use any protective measures, and if the evidence discloses that intercourse took place on two separate occasions, wouldn't it be reasonable for a woman to suspect the possibility of a pregnancy? A. At 40 years of age, no.

Q. Women of 40 years of age cannot become pregnant? A. Oh, they do, but is very unusual, quite rare at 40.

Q. At 40 it is unusual? A. It is quite rare.

Q. Are you saying, Doctor, that at the age of 40 they have undergone the menopausal period? A. Not necessarily, no, but their reproductive ability decreases and at 40 the pregnancy rate is extremely low.

Q. Extremely low? A. Yes.

Q. Is that your opinion as a professional man? A. It is.

Q. So that, Doctor, if you say that she didn't know—let me put it this way: What was it you said in answer to the question, 'Did the defendant know the difference between right and wrong at the time she committed the act'? What is your answer to that question, your opinion? A. My answer is that she had a substantial reduction in her ability to judge right and wrong, that she thought the act that she was doing was a right act. She thought it was right to kill her husband and to kill herself.

Q. Well, Doctor, if evidence discloses that after the act this defendant stated to her cousin, 'I am a murderess, I may go to the electric chair,' wouldn't that indicate that she had knowledge of what was wrong?

Mr. Lamb: Objection, your Honor.

The Court: Sustained.

Mr. Marchese: That is based on evidence, Judge.

The Court: Reread the question to Mr. Marchese.

(Pending question read as above.)

A. Not necessarily—

The Court: Do you wish to rephrase your question, Mr. Marchese?

Q. Doctor, if the evidence discloses that this defendant said, 'I am a murderess, I may go to the electric chair,' would that change your opinion?

Mr. Zablow: Objection. There is no such evidence or testimony.

Mr. Marchese: There certainly is. Mrs. Mann ..ified to that.

The Court: I am going to sustain the objection again, Mr. Marchese."

The final defense witness was Dr. Paul Hecht, a practicing psychiatrist, who examined the appellant on August 12 and again on August 27, 1965, in the Nassau County Jail. The Doctor expressed the opinion that the appellant had been suffering from a severe personality disorder that had been with her throughout her entire life. The disorder consisted of neurotic psychosomatic schizoid and depressive elements.

In the judgment of Dr. Hecht, the appellant at the time of the examination had apparently recovered from the psychotic episode during which she killed her husband and which lasted until she was hospitalized, the evening of the homicide at Meadowbrook.

The witness concluded the appellant did not suffer any mental defect although at the time of the homicide she was suffering from a mental disease, as a result of which she lacked substantially the capacity to know and to appreciate the nature and consequences of her conduct, and that it was wrong.

Dr. Hecht's opinion was not, if we read the record correctly, at material variance with that of Dr. O'Neill. Both experts conceded that the defendant knew but didn't really understand and comprehend the nature and consequences of her actions and that such conduct was wrong.

Rebuttal

The District Attorney offered the testimony of Dr. Solon Wolff (1621) to offset the opinions of Dr. O'Neil and Dr. Hecht.

Dr. Wolff after long institutional experience joined the staff at Matteawan in 1941, retiring on December 1, 1964, as the Assistant Director. Although Dr. Wolff did not personally examine the appellant, he did read all the hospital records at Meadowbrook and Doctors Hospital, Freeport, and he did study the evidence, plus the testimony rendered at the trial, and he was present when Doctors Lane, O'Neill and Hecht testified.

Dr. Wolff expressed the opinion that there was no evidence whatsoever that the appellant had ever suffered from a psychosis at any time in her life.

Dr. Wolff expressed the opinion that she was a *neurotic person,* with a neurotic personality, and that she had manifested symptoms of reactive depression to certain situations and problems of life.

We take it that the main point to Dr. Wolff's testimony has to do with the absence of any treatment. Specifically, Dr. Wolff testified if the appellant was, in fact, suffering from a psychotic depression, or if she had a psychosis, her recovery would have been miraculous because she received none of the treatment customarily given to a psychotic.

Dr. Wolff said that a psychosis, which all are agreed covers the case of a defendant within the protection of § 1120, is a very severe type of mental illness chiefly characterized by its absence from all touch with reality.

The symptoms of a psychotic indicate that a psychotic is not aware of reality in his environment or the basis for his abnormal thinking and illogical manner. A psychosis must have a duration as well as depth.

Psychoneurosis, on the other hand, relates to a neurotic individual and is one of the mild types of mental illness of which there are many varieties. Some psychotics are obsessed with fears or phobias whereas others, like the hysterical type, will act out their feelings and thinking in a particular way.

The Writ Should Be Disallowed

There are no compelling reasons for granting the writ because the New York State Court of Appeals did not decide a federal constitutional question heretofore undetermined by this Court.

Moreover, the Court of Appeals has not decided this case in a way probably not in accordance with any prior controlling decision of this Court.

There is not the slightest doubt regarding the fact that appellant killed her husband by hammer blows to the head and multiple stab wounds to the body.

The jury verdict that appellant premeditated and deliberated the intent to kill is both clear and convincing. As a matter of fact, the sufficiency of the evidence is not even challenged.

Speaking of deliberation and premeditation, the Court has consistently held that all the law requires is some reflection and thought preceding the criminal act. Where there is thought and reflection and where there is, as here, a choice and a determination as the result of these mental actions, then there is adequate deliberation and premeditation within the law (*People* v. *Harris* [1913] 209 N.Y. 70, p. 75; *People* v. *Ferrarro* [1899] 161 N.Y. 365, p. 375; *People* v. *Hawkins* [1888] 109 N.Y. 408, p. 411; *People* v. *Majone* [1883] 91 N.Y. 211, p. 212).

With this brief view of the settled law, let us now turn to the undisputed facts to determine if there was evidence

of premeditation and deliberation. The jury by their verdict have found as a fact that the appellant carefully planned to kill her husband. The planning and preparation consisted in the dousing of the butterscotch pudding with sleeping tablets.

The jury, by their verdict, have concluded that after the deceased finished his dessert, the appellant waited until he had fallen asleep, after which she recovered a hammer from the garage and arming herself with a knife from the kitchen, crept to the cellar below where she deliberately killed her unconscious husband.

The case reeks with planning and preparation traditionally associated with a common law murder. The cases are legend where a defendant, under circumstances such as this empties his weapon into the body of his victim or rains numerous blows with a deadly weapon, or plunges a knife into the body of the deceased over and over and over again, proof of a deliberate and premeditated intent to kill will have been clearly established (*People* v. *Harris, supra; People* v. *Ferraro, supra; People* v. *Hawkins, supra; People* v. *Majone, supra*).

As Regards the Confession

Appellant contends her admissions and confessions were incompetent because she was under the influence of sleeping tablets. The general rule apparently without exception is that a *trustworthy* confession of an alcoholic or addict is not incompetent as a matter of law because the confessor was under the influence so long as the accused was capable of understanding the meaning of his statement (*People* v. *Schompert* [1967] 19 N.Y. 2d 300, cert. den. 389 U.S. 874 [alcoholic]; *People* v. *Duncan* [1945] 72 Cal. App. 2d 247, 164 P. 2d 313 [sleeping tablets, self-administered, suicide attempt]; *Lightfoot* v. *Commonwealth* [1949] 310 Ky. 151,

219 S.W. 2d 984 [benzedrine self-administered]; *State* v. *Wise* [1955] 19 N.J. 59, 115 A. 2d 62 [drug addict-withdrawal symptoms]; cf. *Townsend* v. *Sain* [1963] 372 *U.S.* 293 [phenobarbital-hyoscine, a/k/a truth serum]; *Jackson* v. *Denno* [1964] 378 U.S. 368, [demerol and scopolamine]; Anno: Confession—Use of Drugs—Effect, 69 ALR 2d 384).

Persuasive, if not controlling, was the recent action of the Court in the case of *Paul Joseph Schompert* (19 N.Y. 2d 300). The record established that Schompert several days before his arrest had been released from a hospital where he had been diagnosed as an alcoholic and psychotic. Shortly after his arrest, he was taken to the hospital in delirium tremens. The defendant was in his early forties and had been a chronic alcoholic for years with a history of psychosis.

It appears that he phoned the police from a public bar in Rochester and reported that he had committed a burglary. Upon arriving at the bar, the police disbelieved Schompert because of his intoxicated condition.

Dismayed, Schompert offered to prove it to the police by taking them to a locker at the Greyhound Bus Station where he said the proceeds would be found. Sure enough, the authorities with Schompert in tow did discover the various items of property stolen from the burglarized premises.

The Officers in question all testified that Schompert appeared to be on the verge of delirium tremens.

At issue in the case was the confession of Schompert that he had committed the burglary. The Court concluded (*supra,* p. 305):

> " 'proof that the accused was intoxicated at the time he confessed his guilt of crime will not, without more, bar the reception of the confession in evidence. But

> if it is shown that the accused was intoxicated to the degree of mania, or of being unable to understand the meaning of his statements, then the confession is inadmissible.' "

If this is the test, and we believe it to be so, applicable to a confessor who has taken a sleeping tablet, or other drug, then most assuredly, the admissions and confessions of appellant were competent. Absolutely *no* witness testified "the accused was intoxicated to the degree of mania"; neither did any of the witnesses testify that she was "unable to understand the meaning of [her] statement."

The record is almost without contradiction that appellant was fully cognizant of what she was saying and doing. All of the police officers who were in on the original contact with appellant, as well as the admitting physician at Meadowbrook Hospital, testified that her physical appearance appeared to be good. Her speech seemed to be normal and coherent although slightly slurred. As a matter of fact, she was discharged from Meadowbrook within 12 hours of her admission.

Not one but all the witnesses had appellant walking all right, talking okay, although growing drowsy as the night drew on.

There was not a single iota of evidence from those in attendance that appellant was incapable of comprehending the meaning of what she was saying or the significance of what she was doing.

Moreover, when appellant inquired of Patrolman Farmer "if they had done away with the death penalty yet" (290), the inescapable conclusion is one of full and completeness awareness.

If we grasp appellant's argument correctly, it is that all statements made by the defendant after Patrolman Distefano and Sergeant Walsh entered her house on March

20, 1965, were inadmissible as not having been voluntarily made because she was under the influence of drugs which she had taken.

This is an over-statement of the appropriate law for an admission or confession is not incompetent simply because it was rendered by one while "under the influence of drugs" unless "it is shown that the accused was [drugged] to the degree of mania, or of being unable to understand the meaning of [her] statements" (*People* v. *Schompert, supra,* p. 305).

This is what the Supreme Court had in mind in *Townsend* v. *Sain, supra,* when it condemned the use of a confession not freely given by an irrational person (372 U.S. 293, p. 307).

Appellant's claim that the confessions resulted from police questioning, has no application to her confession to Betty and Seymour Mann, and it has no more application to the spontaneous declarations made to Sergeant Walsh and Patrolman Distefano when they arrived at the scene. Their testimony permits no finding of fact except that defendant made an unsolicited statement of guilt not in reply to any questioning or interrogation. Volunteered by her, it was uncalled for by any police action (*People* v. *Kaye* [1969] 25 N.Y. 2d 139, p. 144; *People* v. *McKie* [1969] 25 N.Y. 2d 19).

Appellant's contention that she did not and could not have freely, knowingly, and understandably, intentionally and voluntarily waived her constitutional right to counsel is unsupported by the credible evidence.

First of all, no one ever testified that they advised defendant of her right to counsel for an accused in 1965 had no such recognizable Fifth or Sixth Amendment right at the investigation stage (*People* v. *Gunner* [1965] 15 N.Y. 2d 226).

Whatever be the full intendment of appellant's argument, *i.e.*, Miranda-retroactivity, we are all presently bound to give Miranda prospective meaning only (*People* v. *McQueen* [1966], 18 N.Y. 2d 337; *Johnson* v. *New Jersey* [1966], 384 U.S. 719) relegating the issue of counsel or the lack thereof strictly to the Fourteenth Amendment issue of voluntariness (*supra*).

With Reference to Defendant's Sanity

Any doubt that might have lingered in the jury's mind regarding appellant's sanity when she confessed was dispelled not only by the joint testimony of the police who described appellant's acts and declarations at the scene as those of a rational being but, most forcibly, by the combined testimony of Dr. Hyman and Dr. Kuo.

Dr. Stanley Hyman (912 *et seq.*) did not testify at the voir dire, only at the trial. His testimony, we think, was entitled to great probative value because he was a physician with a unique opportunity to examine appellant at the scene shortly after the killing and practically simultaneously with the volunteered statements testified to by Sergeant Walsh and Patrolman Distefano, as well as the written statement (People's Exhibit 39) procured by Detective Ryan.

Doctor Hyman found appellant in the kitchen with Sergeant Ryan and other uniformed men. He checked her "pulse, blood pressure, her respiration and her reflexes" (916).

She had a "rapid pulse" (916) whereas the respiration was "neither unduly elevated or depressed" (917). Dr. Hyman found no "abnormality" with regard to the "reflexes" (917). The pupils of the eye were not "restricted or dilated" (917) and in the opinion of Dr. Hyman, the appellant was oriented (917).

Appellant knew her name and where she was although she was uncertain whether it was still Friday evening or Saturday morning (917-918).

Moreover, the appellant well knew that Dr. Hyman was a Doctor (918). As a matter of fact, appellant volunteered "'I really don't need a physician at this time. I need a friend'" (918).

As a result of what Dr. Hyman learned from the police and as a precautionary measure, he thought it best to send appellant to the hospital (918).

On cross-examination, Dr. Hyman repeated that he found no "abnormalities" (926) with regard to appellant's heart or lungs although he had a "sneaking suspicion" that "nystagmus", *i.e.* rapid movement of the eyes might have been present (927).

Dr. Hyman did not indicate to the police that appellant should not be questioned (938).

It is most respectfully submitted the sum total of Dr. Hyman's testimony does not prove or even tend to prove "that the accused was intoxicated to the degree of mania, or of being unable to understand the meaning of [her] statements" (*People* v. *Schompert* [1967] 19 N.Y. 2d 300, p. 305).

Even more damaging to the cause of appellant was the testimony of Dr. Betty Lee Kuo (291 *et seq.*) offered at the pretrial hearing. We have carefully itemized the testimony of the lady doctor in our statement of the evidence and we propose not to duplicate the effort.

It is our understanding of the Doctor's testimony that with the possible execution of the rapid movement of the eyes caused no doubt by the sleeping tablets, she found nothing abnormal as a result of her physical examination of this defendant.

She did not report any evidence of a psychosis and did not recommend any psychiatric treatment.

Except for an ordinary physic, the Doctor prescribed no medication whatsoever.

If we read Dr. Kuo's testimony correctly, it cannot be cited as proof that "the accused was intoxicated to the degree of mania, or of being unable to understand the meaning of [her] statements" (*supra*).

In sum, then, the evidence conclusively demonstrates beyond a reasonable doubt that appellant's statements made to Patrolman Distefano and Sergeant Walsh, and the written confession solicited by Detective Ryan were trustworthy, *i.e.* competent so the judgment on this score should not be overturned.

Criminal Act

The overall issue of appellant's legal responsibility at the time of the criminal episode is not completely separable from the confession because there was no appreciable time span between the two.

Undeniably, if appellant was not responsible in terms of § 1120 of the Penal Law, this would be a defense to the criminal act.

The claim here, as we understand it, is that appellant is not legally responsible because at the moment of the homicide, if not at the time of the admissions and confessions made almost instantly thereafter, she did not know and appreciate the nature and consequences of such conduct, and that such conduct was wrong. The credible evidence contradicts appellant's assertion.

It is conceded if the judge and jury believed Dr. O'Neill (1441 *et seq.*) and Dr. Hecht (1539 *et seq.*), then not only would the appellant have been acquitted but, most assuredly, in the process the jury would have rejected all the admissions as well.

Contrasted with the opinion of Dr. O'Neill and Dr. Hecht was the opinion of Dr. Wolff, late of Matteawan who gave it as his judgment that appellant did possess the requisite capacity to be held legally liable.

It would be redundant to repeat or review for a second time the specifics of the Doctor's testimony. The fatal flaw in the judgment or opinion of Dr. O'Neill and Dr. Hecht is, we think, that they went altogether too far. The jury could not accept the view of the defense experts that appellant did not truly know or fully appreciate the nature or consequences of putting sleeping tablets in the butterscotch pudding.

Moreover, the jury considered it unbelievable that appellant was unaware that she was lying in wait until the deceased fell asleep.

The jury undoubtedly could not accept the view of Dr. O'Neill and Dr. Hecht that when the appellant retreated to the garage to arm herself with the hammer that she lacked the substantial capacity to know and appreciate that she was arming herself with a deadly weapon.

Undoubtedly the jury rejected the opinion of the Doctors that when the appellant returned to the kitchen of her home and armed herself also with a knife that she lacked the substantial capacity to know and appreciate that she was arming herself with a second deadly weapon.

The jury had every right to reject Dr. O'Neill's view and that of Dr. Hecht and join with Dr. Wolff in believing appellant did, indeed, know precisely and exactly what she was doing throughout.

Moreover, the jury were justified in finding as a fact that the appellant definitely knew serious injury or death was likely to ensue from the repeated blows to the head by the hammer, followed by the 22 knife wounds to the body.

It is not unusual for an expert in a criminal case in the area of insanity to conclude the defendant lacked the substantial capacity to know *or* appreciate that her conduct was wrong. It is rare however,—to discover a case where an expert will go so far as to testify the defendant also lacks the substantial capacity to know and appreciate both the nature and consequences of the criminal act. Short of a raving maniac, it is hard to conceive of any human who would not have the substantial capacity to know and appreciate the nature and consequences of their own acts and declarations even if they did not really know they were wrong.

This balancing and counterbalancing of the "opinion" of the three experts is best resolved by a careful reading of the testimony.

The evidence as is so often the case, more believable and trustworthy, cannot from the experts who examined the suspect long after the criminal act in question but out of the mouths of those who observed the appellant at the scene and talked to her at the scene, and examined her at the scene, as well as later the same evening at Meadowbrook.

No one challenges the authority of a competent expert to express an opinion for the defense. Experience teaches us though that in most cases much more is required for the defense to carry the day (*People* v. *Higgins* [1959] 5 N.Y. 2d 607, p. 612; *People* v. *Horton* [1954] 308 N.Y. 1, pp. 10-11; *People* v. *Kelly* [1951] 302 N.Y. 512, pp. 517-518; *People* v. *Samuels* [1951] 302 N.Y. 163, pp. 166-168; *cf. People* v. *Sherwood* [1936] 271 N.Y. 427; *People* v. *Schmidt* [1950] 212 N.Y. 324).

Here, there was no proof from the family, friends, acquaintances, neighbors or cohorts that knew appellant best regarding unusual or bizarre acts or declarations prior to the criminal episode circumscribed by this case.

On the other hand, all of the witnesses at the scene, including those later that night at Meadowbrook, gave testimony that appellant did not have a mental disease or mental defect that caused her to lack the substantial capacity to know or appreciate either the nature and consequences of her conduct or that such conduct was wrong.

That the appellant may have suffered from some mental disease or defect is not controlling (§ 1120, Penal Law). It is only where the mental disease causes the defendant to lack the "substantial capacity to know or appreciate either the nature and consequences of such conduct or that such conduct was wrong" (*supra*) that acquittal follows.

All the expert evidence is one way: The defendant did, indeed, have a mental disease. The fatal weakness at the trial in the appellant's position, as it is on this appeal, is the failure to grasp the significance of the statute which requires a clear showing that the mental illness did affect the appellant's capacity substantially to know or appreciate the nature and consequences of what she was doing, *or* that what she was doing was wrong.

That the killing of the deceased was senseless is beyond question but then are not most such killings? However vengeful, sullen, peculiar, or senseless, appellant's actions (*People* v. *Hoch* [1896], 150 N.Y. 291) it remains the law to this date (§ 1120, Penal Law) that such conduct constitutes neither an excuse nor defense to murder (*People* v. *DiPiazza* [1969], 24 N.Y. 2d 342, pp. 348-349).

Defendant's reliance on *Townsend* v. *Sain* [1963], 372 U.S. 293, and *Jackson* v. *Denno* [1964], 378 U.S. 368), is clearly misplaced.

Townsent, a drug addict, was given phenobarbital and hyoscine to make him confess. Hyocine is the same as scopolamine or truth serum. While suffering severely from the withdrawal symptoms, the injection was given by a police doctor.

The Supreme Court reminded us a confession is incompetent by Fourteenth Amendment standards: "if an individual's 'will was overborne' or if his confession was not the product of a rational intellect and a free will" (*supra*, p. 307).

The Court reasoned, "the standards are applicable * * * to a drug induced statement" (*supra*). The Court concluded, "It is difficult to imagine a situation in which a confession would be less the product of a free intellect, less voluntary, than when brought about by a drug having the effect of a 'truth serum' " (*supra*, pp. 307-308).

Whatever the ultimate test may be in New York *in the case of a police injected drug*, it is not relevant in any way to this case because it is undisputed the police did not give appellant sleeping tablets to overcome her resistance thereby coercing a confession from her.

It was the police action when dealing with a young addict who was a near mental defective that was condemned in *Townsend* v. *Sain* (*supra*) just as it was challenged in *Jackson* v. *Denno* (*supra*).

Jackson was given demerol and scopolamine while getting ready for a three-hour operation. According to Jackson, he was near "mania" because of the two gunshot wounds inflicted by a dying New York City Police officer. Moreover, he was craving for something to drink and the police refused to give him any water. He was on a stretcher waiting to be hauled into an operating room.

Nevertheless, according to Jackson, the police insisted they would not leave him alone "until he gave the answers the authorities desired" (*supra*, p. 392).

Jackson claimed from the stand his will was overcome by the drugs. The Court said in ordering a hearing: "If Jackson's version of the facts is accepted, the confession is involuntary and inadmissible" (*supra*, p. 392).

It is immediately apparent that a material and controlling factual difference exists between *Townsend* and *Jackson* on the one hand and Marion Adams on the other. Nowhere in this case did the appellant testify she was near "mania" or that her "will" was overcome by police induced drugs.

Moreover, neither did any witness for the prosecution or defense testify that appellant's will was overcome by drugs or that she was near mania.

In point of fact, no defense witness attributed the defendant's confessions to the sleeping tablets.

Neither did any of the defense witnesses testify defendant would never have confessed but for the sleeping powder.

Townsend and *Jackson* shed no light on appellant's case —none whatsoever.

This defendant carefully plotted the murder of her husband for $20,000. She then lost her nerve. We say, most respectfully, that appellant received a fair trial before an impartial judge and jury. More she was not entitled to and did not deserve.

CONCLUSION

The petition should be denied.

Respectfulily submitted,

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APPENDIX

Opinion of New York State Court of Appeals

2 No. 411. 69

THE PEOPLE &C.,

Respondent,

vs.

MARION G. ADAMS,

Appellant.

JASEN, *J.*:

This appeal involves several issues raised by an insanity defense to the charge of murder in the first degree.

On March 20, 1965, the defendant fed butterscotch pudding heavily laced with sleeping pills to her husband. When he had fallen asleep, she bludgeoned him to death with a hammer and stabbed him repeatedly with a kitchen knife. Following the crime, she ingested a quantity of sleeping pills, and called her cousin to say that she had killed her husband and was about to take more pills. The police officers who responded to the cousin's call prevented the defendant from consuming any more pills and received several admissions from the defendant. She stated that she had killed her husband because of an extramarital affairs and to provide her daughter with the proceeds of an insurance policy. The defendant was then removed to a hospital for treatment of a possible drug overdose where she again admitted that she had killed her husband because of her romantic involvement with a psychiatrist.

Indicted for murder in the first degree on March 23, 1965, defendant pleaded not guilty by reason of insanity. At her trial the admissions, which had earlier been ruled voluntary in a pre-trial hearing (*People* v. *Huntley*, 15 N.Y.

2d 72), were received in evidence against her. On March 8, 1966, the jury found defendant guilty of murder in the first degree, and she was subsequently sentenced to imprisonment for life. The Appellate Division unanimously affirmed, without opinion.

Initially, defendant argues that the court failed to adequately charge the jury under the then-recently amended section 1120 of the former Penal Law dealing with insanity.

Prior to the amendment of former Penal Law section 1120 in 1965, the standard of criminal responsibility in this state was the M'Naghten Rule, which provided that a criminal would not be excused from criminal liability as an insane person unless "at the time of commiting the alleged criminal act, he was laboring under such a defect of reason as (1) not to know the nature and quality of the act he was doing; or (2) not to know that the act was wrong." (N.Y. Sess. Laws, 1881, ch. 676, § 21, repealed, eff. July 1, 1965, N.Y. Sess. Laws, 1965, ch. 593, § 1.) Although commentators and textwriters for a number of years criticized this standard as being out of touch with the realities of modern thought on mental illness (see, e.g., Glueck, *Mental Disorder and Criminal Law,* 264-266 [1925]; Comment, 26 Albany L. Rev. 305, 306-308), the Legislature did not see fit to cause the statute to be amended for many years. (See, *People* v. *Taylor,* 138 N.Y. 398, 407-408; *People* v. *Horton,* 308 N.Y. 1 at 13.) The Governor became aware of the shortcomings of M'Naghten as a result of a clemency hearing following our affirmance in *People* v. *Horton* (*supra*) and appointed a commission to recommend possible improvements which could be made to New York's criminal responsibility statute. (See, Gutman, *People* v. *Horton: Is the M'Naghten Rule Adequate?,* 7 N.Y.L.F. 320.)

This commission reported in 1958 (Governor's Conference on the Defense of Insanity, "Interim Report of the

Study Committee [hereinafter referred to as the Foster Report]) that the then-current statute containing the M'Naghten Rule should be amended to overcome three major objections. First, it was reported that a difficulty arose in the use of the word "know" in M'Naghten because a defendant might be able to verbalize that some act is wrong and yet have no depth of understanding as to what this means. Another defect with M'Naghten was said to be its emphasis on the actor's cognitive capacity. The Commission noted that the M.Naghten test disregarded the notion that an individual might have minimal awareness of some fact and at the same time lack the ability to control his conduct in light of this. Finally, the Commission stated that M'Naghten taken on its face called for a total impairment of ability to know, whereas in even the most extreme psychoses it is impossible to say that the actor was totally bereft of knowledge or control.

The Foster Report suggested an adaptation of section 4.01 of the Model Penal Code (see, A.L.I., Tentative Draft No. 4 [1955], p. 27, Comments at 156-159) as a replacement for the M'Naghten Rule. In 1963, the Temporary Commission on Revision of the Penal Law and Criminal Code issued an interim report recommending a new insanity statute. This interim report embraced the conclusions and recommendations of the Foster Report. However, this proposal met with strong opposition from various groups, particularly the District Attorneys, and it was not until 1965 that section 1120 of the former Penal Law was amended to provide:

> "A person is not criminally responsible for conduct if at the time of such conduct as a result of mental disease or defect he lacks substantial capacity to know or appreciate either:
>
> (a) the nature and consequence of such conduct; or
>
> (b) that such conduct was wrong."

As noted in the Practice Commentary to section 30.05 of the revised Penal Law (successor to former Penal Law section 1120, as amended) in Volume 39(I) of McKinney's Consolidated Laws,

> "The new or changed formula, while more limited than the original proposal, expands the old M'Naghton Rule. Lack of 'substantial capacity' is a more realistic measure than the total impairment required for exculpation under McNaghton. Further, by relating the test to the defendant's mental 'capacity,' the standard is clarified, for, indeed, it is the defendant's power or capacity to know or appreciate about which the psychiatric witness actually testifies.
>
> "A new dimension is accorded the word 'know' by following it with 'or appreciate.' This is designed to permit the defendant possessed or mere surface knowledge or cognition to be excused, and to require that he have some understanding of the legal and moral import of the conduct involved if he is to be held criminally responsible."

In this case, the trial court instructed the jury that the law would absolve the defendant only if she suffered a defect of reason as the result of a mental disease or defect which prevented her from having the substantial capacity to know or appreciate either the nature and consequences of the charged conduct or that such conduct was wrong. The court added that the People must prove both elements —i.e., that at the time of the killing the defendant knew she was hurting the decedent and that she knew this act was wrong. The court explained that mere surface knowledge is not sufficient to meet this requirement, and described surface knowledge as the type of knowledge children have of propositions which they can state, but cannot understand. Such knowledge, the court charged, has no depth and is divorced from comprehension. The judge added,

that the law intends to impose criminal responsibility upon the defendant only when and if it is proven beyond a reasonable doubt that she has some understanding, as opposed to surface understanding of the legal and moral import of the conduct involved.

In regard to the requirement that the defendant must know that the act was wrong, the court instructed the jury that to be held responsible the defendant must have realized that the act was against the law and against the commonly accepted standards of morality. A mere opinion contrary to the general morality, or a substantial propensity to commit crimes, the judge noted, is not sufficient to indicate the defendant did not understand the act was wrong. As an example, the court explained that a man who kills because he is under the impression that he is a messenger of God sent to kill all the atheists, may understand the nature and consequences of his act, but does not know or appreciate that such conduct is wrong.

It is argued by the defendant that the use of the term "defect of reason" in the instruction misled the jury into believing that they were not permitted to acquit the defendant unless they found she was suffering from a mental defect. We do not agree. The use of the term "defect of reason" by the court, when read in the context of the entire charge, is clearly not misleading. In marshaling defendant's psychiatric evidence, the judge in his charge carefully pointed to testimony that "she was not suffering from any mental defect, but a mental disease." Moreover, as previously mentioned, the court specifically instructed the jury that defendant would be relieved of criminal responsibility if they found she was suffering from a defect of reason as a result of mental defect *or* disease which prevented her from having the substantial capacity to know or appreciate either the nature and consequences of the charged conduct or that such conduct was wrong. From this, it is apparent that the jury would not have been misled as the defendant suggests.

Defendant also challenges the court's instruction in regard to "surface knowledge". Reading the charge with regard to "surface knowledge" indicates that it is substantially the same as the discussion of the subject in the Foster Report and the 1963 Interim Report of the Temporary Commission on Revision of the Penal Law and Criminal Code.

Equally specious is the objection to the charge relating to "substantial capacity to know or appreciate", as the terms are used in former Penal Law section 1120.

As mentioned above, the jury was charged that the defendant should not be found guilty if she lacked the substantial capacity to know or appreciate either the nature and consequences of her act or that it was wrong. Explaining the meaning of "surface knowledge", as stated before, the court went on to say that defendant could be held criminally responsible only if it were proven beyond a reasonable doubt that she had "some understanding as opposed to surface understanding" of the legal and moral import of the conduct involved. We conclude that the trial court adequately charged the degree of understanding required to comply with the apparent intention of the Legislature in changing the M'Naghten Rule.

In reference to her oral and written statements made to the police, defendant alleges error because (1) she was not advised of her right to counsel before making the statements, and (2) the statements were involuntary since she was under the influence of drugs (sleeping pills) and was suffering from a mental disease at the time.

There is no support in law for the first claim inasmuch as the lack of such advice does not render confessions inadmissible in trials begun before the date of the decision in *Miranda* v. *Arizona* (384 U.S. 436). (See, *People* v. *McQueen*, 18 N.Y. 2d 337.) With respect to defendant's argument that her alleged drug intoxication made the statements involuntary, we have held that self-induced

intoxication does not *ipso facto* render a confession invalid (*People* v. *Schompert*, 19 N.Y. 2d 300). It is only when the defendant's will has been overborne by interrogation (*Townsend* v. *Sain*, 372 U.S. 293, 307) or the state of intoxication has risen to the degree of mania, or the statements are shown by reference to other evidence to be unreliable, that a confession is rendered inadmissible (*People* v. *Schompert*, *supra*, at 305). The same criteria are applicable to admissions made by a defendant suffering from a mental disease. (*Blackburn* v. *Alabama*, 361 U.S. 199; *People* v. *Howard*, 27 A.D. 2d 796.)

The evidence adduced at the pre-trial confession hearing reveals that "Mrs. Adams was not interrogated" but had "talked freely with the witnesses." While there is testimony that the defendant appeared drowsy and that she was taken to a hospital for treatment of a drug overdose, it appears that the defendant did "know what she was doing when she gave statements" to the police. Her comment that she would deny her admissions in court and her concern about receiving the death penalty clearly indicate that she was well aware of the import of her statements. Moreover, the reliability of the admissions is further indicated when the defendant's description of the crime is compared with the physical evidence at the scene.

The trial court found that the defendant, at the time she made the statements, was not under the influence of drugs so as to impair her ability and power to resist interrogation. The record clearly supports this conclusion and, moreover, indicates that the admissions were not the result of mania or police suggestion.

Defendant also contends that prejudicial error was committed because the trial judge refused to instruct the jury that if they found defendant not guilty by reason of insanity, she would be turned over to the Commissioner of Mental Health for further processing in accordance with the laws of this state.

There is conflict amongst the courts throughout the country on this issue. In a few jurisdictions it has been held that the instruction is proper and should be given. (*Lyles* v. *United States*, 254 F. 2d 725; *Kuk* v. *State*, 80 Nev. 291; *State* v. *Shoffner*, 31 Wis. 2d 412.) In approving the charge in question, the Supreme Court of Nevada noted, "The purpose of the instruction is to inform the jurors that if they find the defendant insane, and acquit, he will not walk out a free man, but will be confined for medical treatment. (*Kuk* v. *State*, *supra*, at 300.) However, in a majority of the jurisdictions, the courts have held that such an instruction should not be given. (See, *Pope* v. *United States*, 298 F. 2d 507; *Campbell* v. *State*, 216 Ark. 878; *State* v. *Park*, 159 Me. 328; *State* v. *Garrett*, 391 S.W. 2d 235 [Mo.]; *State* v. *Bracy*, 215 N.C. 248; *State* v. *Daley*, 54 Ore. 514; *State* v. *Hood*, 123 Vt. 273.) Two basic reasons are given for the majority position: first, it is considered that to inform the jury about post-trial disposition of the defendant might confuse the issue or issues to be decided, thereby drawing the attention of the jury away from their chief function of judging the facts. (*Pope* v. *United States*, *supra*; *State* v. *Park*, *supra*.) Another reason given is that such an instruction might tend to influence the jury to find the existence of mental irresponsibility by deviating from the strict confines of the evidence on mental disorders. In fact, it has been said that such an instruction actually amounts to an invitation for the jury to reach a compromise verdict and find the defendant mentally irresponsible because he will be confined, anyway. (*State* v. *Garrett*, *supra*.)

Aside from *People* v. *Nagel* (—— N.Y. 2d ——, decided herewith), it appeals that the only other instance in which this court has dealt with the question was in *People* v. *Newman* (1 N.Y. 2d 875), where the trial court declined to give the requested instruction and we affirmed the con-

viction without opinion. It was, and is, our view that it would be improper for the court to give the instruction requested by the defendant. Consideration of punishment or disposition of the defendant is beyond the province of the jury. While it might be argued that the jury presently tends to consider possible punishment even though it is beyond their province, we conclude that to permit the instruction requested would only tend to exacerbate this problem. Such instruction might, as some of the majority jurisdictions have noted, prompt a jury to find insanity where the evidence might not otherwise have warranted such a finding.

The remaining contentions raised by the defendant have been fully considered by us and found to be without merit.

The order and judgment of conviction should be affirmed.

* * *

Judgment affirmed. Opinion by JASEN, *J.* All concur.